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OGC HAS REVIEWED.

31 August 1955

MEMORANDUM FOR: Inspector General

VIA: Acting Deputy Director (Support)

SUBJECT: Claims for Damaged Household Goods of [REDACTED] 25X1A9a
[REDACTED] 25X1A9a

REFERENCE: Memorandum for Deputy Director (Support) from
Chairman, Headquarters Board of Survey, same
subject, dated 14 March 1955

1. The reference memorandum was forwarded to this Office by the Deputy Director (Support) for recommendations as to what could be done for the subjects.

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2. In summary, the abundant files indicate that the subjects, staff employees of [REDACTED], were sent to [REDACTED] in early 1951. The household and personal effects of [REDACTED] were packed for shipment by [REDACTED], under a contract let by the Agency on 3 November 1950. [REDACTED] effects were packed under an open market contract. The record clearly indicates gross negligence in the packing of the effects and severe damage resulting therefrom. All three individuals promptly reported the damage to the Agency. Prior to the time the case was forwarded to this Office, formal claims for the damages sustained were filed by the Agency against the packer and against the shipper. Both parties denied liability. 25X1A6a
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3. On 13 May 1954, the Chief, Fiscal Division, wrote to the General Accounting Office requesting that they pursue the claim against [REDACTED]. In a letter dated 27 June 1954, the General Accounting Office replied that the loss or damage to the effects was personal to the employees, and that in this connection you are advised that it has been consistently held by the Accounting Offices of the Government that the Government cannot be made agent or trustee for the collection of debts in which the Government has no actual concern. See 17 Comp. Gen. 325, and 15 Comp. Dec. 38. Subsequently, on at least four occasions the cases have been discussed with GAO. GAO has not changed its position.

4. Upon receipt of the reference memorandum by this Office, repeated attempts to discuss the matter with the insurance adjuster

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for Smith's Transfer and Storage were made. The adjuster declined to answer the calls. On 4 May 1955 [redacted] of this Office addressed a letter to the adjuster which closed by implying that formal action to secure satisfaction of the claims would be instigated unless voluntary settlement was reached. In reply to this letter has been received.

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5. At this point, two things were apparent. First, the Headquarters Board of Survey had determined that there was no legal authority for the Agency to reimburse the employees for the damage to their personal effects. The General Accounting Office, in the letter referred to in paragraph 3 above, confirmed this position with recognition that the damages were personal to the employees. This rule is well established and many Agency employees who, through misadvice or otherwise, have neglected to secure insurance on their effects, have felt the brunt of it. Second, the General Accounting Office would not pursue the claim against [redacted], nor would the company or the adjuster pay hard to the exorbitant of this Agency. Consequently, only one course of action appeared to remain--for the employees to personally pursue their remedy in Court. Apparently, the employees were never formally advised to take personal action because the Agency was endeavoring to effect settlement on their behalf to spare them the substantial personal costs of attorneys' fees.

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6. In looking into the law insofar as their personal legal prospects were concerned, this Office has concluded that the employees are precluded from legal action by a three year Statute of Limitations in the District of Columbia on simple contract or personal property tort actions. The Government, as real plaintiff, is not subject to the Statute of Limitations. However, the Government as such has sustained no damages, and the contract expressly provides that the packer is responsible to the owner for damages resulting from negligence. The Government then cannot be a real or even a nominal plaintiff. The employees, suing as third party beneficiaries to the contract between the Government and [redacted], are subject to the three year Statute of Limitations.

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7. This Office has devoted considerable study to the Statute of Limitations problem. The case has been discussed with outside legal counsel whom we intended to recommend to represent the employees. Unfortunately, the results of this study confirm that the employees are barred from legal action.

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8. [redacted] of this Office has discussed the conclusions of this memorandum with [redacted], the only employee presently

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available at headquarters, his supervisors, and [REDACTED] of your Office. It is self-evident to all concerned that the cases have been badly handled and the employees ill-advised. To some extent it is understandable that the claims would have been handled on the assumption that the Agency, either directly or through the General Accounting Office, would be able to exert greater pressure on the packer than would the employees personally. However, to the extent that the possibility always existed that the Agency would not be able to effect settlement on behalf of the employees, it is more than unfortunate that the employees were not advised that time was running out if they desired to instigate personal legal action.

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9. I might argue that technically this Office has only the duty to advise the officers and employees of this Agency on the legal rights and liabilities of the Agency in the conduct of its official business, but I have never questioned that we have a responsibility to look after the legal interests of individual employees that are brought to our attention. Thus, while the legal actions of this Office were, I believe, correct in these cases, I do feel responsible for the part played in the history of these cases which resulted in the denial to the employees of their right to take legal action as individuals. This is all the more regretted as I do not see what remedial action can be taken at this time.

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LAWRENCE R. HOUSTON
General Counsel

Attachments: Files on Subject

cc: Director of Logistics

Chief, [REDACTED]

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subject Transportation-2

signer

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